

## Calendar No. 562

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SENATE

{ REPORT  
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### DAMS IN EMIGRANT WILDERNESS, STANISLAUS NATIONAL FOREST, CALIFORNIA

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SEPTEMBER 9, 1998.—Ordered to be printed

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Mr. MURKOWSKI, from the Committee on Energy and Natural  
Resources, submitted the following

### REPORT

[To accompany H.R. 1663]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1663) to clarify the intent of the Congress in Public Law 93-632 to require the Secretary of Agriculture to continue to provide for the maintenance of 18 concrete dams and weirs that were located in the Emigrant Wilderness at the time the wilderness area was designated as wilderness in that Public Law, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

#### PURPOSE

H.R. 1663, as ordered reported, requires the Secretary of Agriculture to continue to provide for the maintenance of 18 concrete dams and weirs located in the Emigrant Wilderness, Stanislaus National Forest, California.

#### BACKGROUND AND NEED

Between 1921 and 1954, local sporting enthusiasts and back country users, with the assistance of the U.S. Forest Service, California Conservation Corps, and the California Department of Fish and Game, constructed a series of 18 concrete dams and weirs throughout an area which was later designated as the Emigrant Wilderness Area. The dams were built from native rock. The last dam was completed in 1954, twenty years prior to wilderness designation.

This bill attempts to clarify the maintenance and status of the 18 structures in the wilderness area. It directs the Secretary of Ag-

riculture to enter into an agreement with a non-Federal entity to retain, maintain, and operate, at private expense, 18 concrete dams and weirs at levels that applied before the wilderness designation.

#### LEGISLATIVE HISTORY

H.R. 1663 was introduced on May 20, 1997, by Congressman Doolittle (R-CA). H.R. 1663 passed the House of Representatives on July 22, 1997 by recorded vote of 424-2.

On March 25, 1998, the Subcommittee on Forests and Public Land Management held a hearing on the measure. At the business meeting on July 29, 1998, the Committee on Energy and Natural Resources ordered H.R. 1663 favorably reported.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on July 29, 1998, by unanimous voice vote of a quorum present recommends that the Senate pass H.R. 1663 without amendment.

#### SECTION-BY-SECTION ANALYSIS

Section 1 requires the Secretary of Agriculture to enter into an agreement with a non-Federal entity to retain, maintain and operate at private expense, the concrete dams and weirs located within the boundaries of the Emigrant Wilderness. This section further states that the non-Federal entity is required to maintain and operate the dams and weirs at the level that applied to them before the enactment of Public Law 93-632.

It is the Committee's intent that the maintenance of the dams and weirs will be done in accordance with the Wilderness Act of 1964.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 6, 1998.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1663, an act to clarify the intent of the Congress in Public Law 93-632 to require the Secretary of Agriculture to continue to provide for the maintenance of 18 concrete dams and weirs that were located in the Emigrant Wilderness at the time the wilderness area was designated as wilderness in that public law.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria V. Heid.

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, *Director*).

Enclosure.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*H.R. 1663—An act to clarify the intent of the Congress in Public Law 93-632 to require the Secretary of Agriculture to continue to provide for the maintenance of 18 concrete dams and weirs that were located in the Emigrant Wilderness at the time the wilderness areas was designated as wilderness in that public law*

CBO estimates that enacting H.R. 1663 would have no significant impact on the federal budget. Because H.R. 1663 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 1663 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no impact on the budgets of state, local, or tribal governments.

H.R. 1663 would direct the Secretary of Agriculture to enter into an agreement with a non-federal entity to retain, maintain, and operate at private expense 16 concrete dams and weirs in the Emigrant Wilderness within the Stanislaus National Forest, California. According to the Forest Service, under a management decision made in 1989, the forest Service has maintained 12 structures and allowed the other 6 to deteriorate naturally; however, under revisions to the management plan currently being prepared, the Forest Service is likely to continue maintaining only 7 of the 18 structures. H.R. 1663 would provide for maintenance of all 18 structures—but at private expense. CBO estimates that implementing the act would not result in a significant change in Forest Service spending.

On July 17, 1997, CBO prepared a cost estimate for H.R. 1663 as ordered reported by the House Committee on Resources on July 16, 1997. This version of H.R. 1663 is identical to the House version, as are the estimated costs.

The CBO contact for this estimate is Victoria V. Heid. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1663.

The bill is not a regulatory measure in the sense of imposing government established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of H.R. 1663.

#### EXECUTIVE COMMUNICATIONS

On April 23, 1998, the Committee on energy and Natural Resources requested executive comment on H.R. 1663 from the De-

partment of Agriculture and the Office of Management and Budget. These legislative reports were not available at the time this report was filed. When the requested reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service at the Subcommittee hearing follows:

STATEMENT OF ELEANOR TOWNS, FOREST SERVICE,  
DEPARTMENT OF AGRICULTURE

Mr. Chairman and member of the subcommittee, thank you for the opportunity to present the Administration's view on H.R. 1663. The Administration opposes H.R. 1663, Operation and Maintenance of Structures in Emigrant Wilderness.

*H.R. 1663, to clarify the intent of Congress in P.L. 93-632 to require maintenance of 18 concrete dams and weirs located in the Emigrant Wilderness*

H.R. 1663 would require the Secretary of Agriculture to continue to provide for the maintenance of 18 concrete dams and weirs that were located in the "Emigrant Wilderness" at the time of its designation. The Department of Agriculture opposes enactment of H.R. 1663.

By way of background, a variety of water control structures exist within the Emigrant Wilderness. Most were constructed in the 1920's and 1930's to enhance recreational fisheries. Several other structures were built as late as 1951. The original function of most structures was to augment stream flows for fish habitat enhancement in downstream areas, and not necessarily to promote lake fisheries. Fish were introduced into the Emigrant area during the late 1920's by stockmen. Prior to this period, these high elevation lakes were barren of fish.

Congress designated the Emigrant Wilderness on January 3, 1975 and at the time of wilderness designation, 18 water control structures existed within the wilderness boundary. The legislative history of the designation indicates the Congress were aware these structures would be included within the wilderness boundary, neither the original legislation in 1975 nor a subsequent legislation specifically addressed these structures, or provided an exception to the general prohibition on structures in the 1964 Wilderness Act. The Forest Service has attempted to address the issue of these structures within the wilderness since the area was designated.

The first effort was development of an "Emigrant Wilderness Management Plan" that was approved August 15, 1979 by the Regional Forester. This plan contained a requirement for a study to determine "the condition, value and cost-effectiveness of the various control structures as well as their efforts on the natural hydrological processes." That study of the 18 water control structures in the Emigrant resulted in an Environmental Analysis, and a decision was issued in 1989. That decision was appealed and

the Regional Forester directed the Stanislaus Forest Supervisor to conduct additional analysis. The Forest Supervisor elected to address the future management needs for the water control structures within the development of the "Emigrant Wilderness Management Direction, Forest Plan Amendment," which was initiated in 1993.

Let me address the current condition and status of the structures. Three types of water control structures exist in the Emigrant Wilderness. There are 12 streamflow augmentation dams, whose purpose is to increase downstream flow during dry seasons in late summer or early fall. These dams raise the height of natural lakes about 6 to 10 feet (the exception is one 25-foot high dam which inundates a former meadow). Each of these dams has a small gate valve to regulate streamflow. Operation of the streamflow valves results in a drawdown of the impounded lake levels.

There are 3 lake-level dams, which add about 3 feet of storage height to existing natural lakes, but are not intended to regulate flow.

There are 3 meadow-maintenance dams, which are small, non-regulating structures located in stream channels at the lower end of meadows. Their purpose is to raise the water table to sub-irrigate the meadows.

The dams are composed mostly of rock and mortar, with the exception of one earth-fill dam. Many of the dams have deteriorated over time as maintenance levels have declined. Seven structures are in poor condition, and are leaking significantly or have washed out and no longer function. The remaining eleven are in fair to good condition. Because of the age and theme of some dams, seven are now eligible for listing on the National Register of Historic Places.

During the 1970's and 1980's, maintenance was shared between the Forest Service and the California Department of Fish and Game (CDFG). The last permit issued to CDFG for maintenance and operation was issued in 1975 and included 11 structures. CDFG declined to participate in maintenance of the other seven structures. Past operation of the dams for streamflow augmentation releases has been primarily by CDFG. Most recently, CDFG has indicated that they will no longer maintain or operate these structures. This is a statewide policy change due to decreasing budgets and workforce, and incurred liabilities for structural safety.

Now, let me turn to the status of the revision of the management direction for the Emigrant Wilderness. The Forest Service is currently revising the management direction for the Emigrant Wilderness. This revision considers the existing statutes as well as the current resource management situation and specifically addresses these structures. The environmental analysis in the EIS considers each structure in the context of its condition, purpose, function and the cumulative effects of the various structures on natural processes. In May of 1996, the Forest re-

leased a Draft Environmental Impact Statement (DEIS) for public review and comment. A final Record of Decision (ROD) is expected to be released sometime this spring. The DEIS evaluation indicates that there are seven dams which are eligible for inclusion on the National Register of Historic Places (Historically Significant) due to their age and construction methods and materials.

During the public review period of the DEIS, a number of public comments directly addressed the water control structures. Comments ranged from support for full retention of all 18 structures, retention of some of the 18, to eliminating all structures. In addition, extensive discussion with the California Department of Fish and Game provided additional information and considerations.

In summary, the Administration has previously testified before the House concerning an earlier version of the legislation. At that time our primary objection to the legislation was based on the greatly reduced management discretion and significant budgetary affects which would have resulted. Subsequent amendments have partially addressed the objections, but concerns remain.

The language now being considered by the subcommittee requires that the "Secretary of Agriculture shall enter into an agreement with a non-Federal entity, under which the entity will retain, maintain, and operate at private expense the 18 dams and weirs" in the wilderness. The use of private sector partners is welcomed and encouraged. However, assuming other entities are willing to enter into such an agreement, the Forest Service will still have to provide for oversight, coordination, project approval, safety inspections, and historical consultations in order to redeem management responsibilities and address public safety and liability concerns. Although maintenance costs for the dams in usable condition is not excessive, if replacement of dams that no longer exist would be required, a significant investment would be necessary. We are also concerned about the implications of language that might require reconstructing facilities inside wilderness. These activities, even if conducted by a non-Federal entity, would still be subject to provisions of the Endangered Species Act, National Environmental Policy Act and other environmental laws.

H.R. 1663 also would require that "The Secretary shall require the entity to operate and maintain the dams and weirs at the level of operation and maintenance that applied to such dams and weirs" prior to wilderness designation. It is unclear what the "level of operation and maintenance" for some structures might imply, given that some 23 years have elapsed since designation and records are virtually nonexistent for many of the dams. Also left unanswered by this language is the resolution of issues which may arise under the Endangered Species Act, historical preservation statutes, and other regulatory changes which have occurred since 1975.

In summary, we think the approach we are taking to look at each dam in the context of its function, current condition, possible historical value, and environmental effect, and make individual determinations is preferable to H.R. 1663 which would require that all structures that existed in 1975 be retained even though some of them are not operative.

*Conclusion*

In conclusion, Mr. Chairman, thank you for the opportunity to testify today.

This concludes my statement. I would be happy to answer any questions you and the other members of the Subcommittee might have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 1663, as ordered reported.

